IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 6339 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HIMANSHUSINHJI J JADEJA & 1 - Applicant(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR DEEPAK M SHAH for Applicant(s) : 1 - 2.MR DU SHAH for Applicant(s) : 1,
Mr. HL Jani, Addl.PUBLIC PROSECUTOR for Respondent(s) : 1,
MR JV BHAIRAVIA for Respondent(s) : 2,
None for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 10/04/2007

ORAL JUDGMENT

1. The petitioners, accused persons in Criminal Inquiry Case No. 76 of 1993 pending in the court of

learned J.M.F.C., Gondal, have invoked the provisions of section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code") for an order to quash the complaint filed by respondent No.2 herein and the order dated 16.12.1993 made thereunder calling for report under section 156 (3) of the Code. The complaint is made on the ground and basis that a public carrier in possession of the complainant was removed on 27.8.1993 by the accused persons and it was thereafter being used by them. The complaint appears to have been made after 4 months of that incident.

2. According to the averments made in the petition and the further affidavit of petitioner No.2, the complainant had nothing to do with the agreement dated 18.3.1991 for sale of 7 trucks including the truck in question which belonged to the petitioners. In fact, the agreement was entered into between the petitioners and the father of the complainant who had filed Regular Civil Suits No.270 of 1993 and 285 of 1993 on the same subject matter and the interim applications made therein for

injunction were rejected. The complainant had preferred two Special Civil Suits No. 64 and 65 of 1996 for possession of the truck in question and for damages, which suits were also dismissed with costs. Original Regular Civil Suits No.270/93 and 285/93 were withdrawn. It is further stated on oath that the father of the complainant had given cheques as part payments as per the agreement dated 18.3.1991 and those cheques were returned for want of funds in February, 1993. These averments are not controverted either by filing an affidavit or in the oral submissions of the learned counsel for respondent No.2. It was also fairly conceded that, in the facts and circumstances of the case and following the well settled proposition, an investigation under section 156 (3) of the Code was not proper or required since the complainant was required to prove his own case on the basis of evidence in his possession. It was also conceded that, in the overall facts and circumstances as briefly narrated hereinabove, the main ingredient of the offence of theft under section 378 of the Indian Penal Code, 1860, i.e. dishonestly taking possession of any property, was missing and could not

have been substantiated either in the complaint itself or by any other evidence.

3. Learned counsel for the petitioner relied upon the judgment of this court in ***Suresh Kumar Gupta v. State of Gujarat (***1997 (2) GLH 356) to submit that in cases where the complainant approaches the court by private complaint, anything needed to prove the case can be and has to be done by the complainant and in such a situation, direction for investigation under section 156 (3) of the Code was not necessary.

4. Learned APP also submitted that any investigation into the complaint or further prosecution of the petitioners may be infructuous and may not serve any purpose in the peculiar facts of the case. Therefore, in short, the petition was required to be allowed to terminate the proceedings by quashing the complaint in exercise of inherent powers of this court to prevent abuse of the process of court. Accordingly, the petition is allowed and Rule is made absolute with the direction that the complaint made by respondent No.2 in Inquiry Case

No.76/93 pending in the court of learned J.M.F.C., Gondal along with the orders made therein, is quashed with no order as to costs.

sd/-
[D. H. Waghela, J.]

msp